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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HUONG HOANG, an individual,

Plaintiff,

v.

AMAZON.COM, INC., a Delaware corporation, and IMDB.COM, INC., a Delaware corporation,

Defendants.

No. 2:11-CV-01709-MJP

IMDB.COM, INC.’S MOTION FOR JUDGMENT AS A MATTER OF LAW

Pursuant to Federal Rule of Civil Procedure 50(a), defendant IMDb.com, Inc. (“IMDb”) moves for judgment as a matter of law because plaintiff Huong Hoang (“Hoang”) has failed to introduce legally sufficient evidence upon which a reasonable jury could award her damages for her breach of contract claim.

To prove her only remaining claim of breach of contract, Hoang must show that a contractual breach by IMDb caused her damage. Dkt. 182; WPIC 300.03 (Burden Of Proof On The Issues—Breach Of Contract). *See also Myers v. State*, 152 Wn. App. 823, 827-28 (2009); *N.W. Independ. Forest Mfrs. v. Dep’t of Labor & Indus.*, 78 Wn. App. 707, 712 (1995). Hoang has not introduced any competent evidence to support a damages award.

IMDB’S MOTION FOR JUDGMENT AS A MATTER OF LAW (No. 2:11-CV-01709) – 1

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1 She has failed to adduce any evidence of damages. In her Second Amended Complaint,
 2 Dkt. No. 45, Hoang contends that she lost income and profits as an indirect result of the alleged
 3 breach by IMDb. Hoang contends that she lost income and profits, not a direct result of IMDb's
 4 alleged breach, but because *third parties who are not a part of this lawsuit* did not give her
 5 acting opportunities. The only link to IMDb is that Hoang assumes that the third parties did so
 6 based on the information that IMDb corrected on its website, and, as addressed further below,
 7 even that link to IMDb is tangential and speculative. At best, Hoang contends that unrelated
 8 parties have refused to give her acting opportunities because IMDb exercised its First
 9 Amendment right to publish truthful and accurate information.

10 Hoang did not present any testimony, documents, or other evidence supporting her
 11 damages allegations of lost income and profits. Neither Hoang nor her agent Joe Kolkowitz—
 12 her only two witnesses on damages—offered any testimony about future damages, and neither
 13 offered competent testimony on which a reasonable jury could base an award of damages for
 14 acting jobs allegedly lost to date. Indeed, Kolkowitz offered no testimony of damages at all, and
 15 Hoang merely speculated about her acting income in direct contravention of her sworn federal
 16 tax returns. Moreover, not a single piece of documentary evidence supports an award of
 17 damages. Legally, mere speculation or guesswork cannot support a jury award. *U.S. v. CB&I*
 18 *Constructors, Inc.*, 685 F.3d 827, 839 (9th Cir. 2012) (citing *Harper v. City of Los Angeles*, 533
 19 F.3d 1010, 1028 (9th Cir. 2008)).

20 Nor may Hoang simply rely on an assertion of nominal damages. Nominal damages by
 21 definition are not actual damages, but are a substitute for actual damages where the evidence is
 22 otherwise legally sufficient to sustain a damages award. *Gilmartin v. Stevens Inv. Co.*, 43 Wn.
 23 2d 289, 298 (1953) (citing *Bellingham Bay & British Columbia R. Co. v. Strand*, 4 Wn. 311, 314
 24 (1892)) ("nominal damages never purport to be real damages."); *Heitmiller v. Prall*, 108 Wn.
 25 382, 388 (1919) (in breach of contract case instructing that "nominal damages was recoverable if
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[the jury] found there had been a breach of contract and substantial damages had not been proven is an error"). Nominal damages are not a substitute for evidence.

In addition to failing to introduce competent evidence of damages, Hoang also failed to establish causation: not a single witness testified that she incurred economic loss as a result of IMDb's alleged breach of the Subscriber Agreement. Hoang, of course, did not testify to any such causation beyond mere speculation. Mr. Kolkowitz affirmatively testified that he was not aware of any acting opportunity, role, or audition that Ms. Hoang lost due to IMDb correcting her date of birth. He also testified that age is just one of many factors that casting directors consider when hiring actors but that talent is the most important. Testimony regarding a "feeling" or a "sense" that Hoang has gotten fewer jobs since 2008 is not enough for a reasonable jury to find that Hoang has proven any breach by IMDb caused her any harm. Moreover, Hoang has not entered even a single document addressing causation.

Based on the evidence presented at trial, no reasonable juror could find that Hoang proved all elements of her breach of contract claim. Therefore, the Court should direct a verdict in favor of IMDb. Fed. R. Civ. Proc. 50(a); *Torres v. City of L.A.*, 548 F.3d 1197, 1205 (9th Cir. 2008) (citing *El-Hakem v. BZY Inc.*, 415 F.3d 1058, 1072 (9th Cir. 2005)).

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CERTIFICATE OF SERVICE

I certify that on April 10, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record

**Derek Alan Newman
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Via hand delivery
 Via U.S. Mail, 1st Class, Postage Prepaid
 Via Overnight Delivery
 Via Facsimile
 Via Email
 Via ECF _____

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 10th day of April, 2012.

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IMDB'S MOTION FOR JUDGMENT AS A
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